

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL  
ROBOT ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO: Lead Case No. 3:21-cv-03825-VC  
ALL CASES

SURGICAL INSTRUMENT SERVICE  
COMPANY, INC.,

Plaintiff,

vs.

INTUITIVE SURGICAL, INC.,

Defendant.

REMOTE VIDEOTAPED DEPOSITION OF  
T. KIM PARNELL, Ph.D.  
Friday, March 10, 2023  
Volume I

Reported by:  
NADIA NEWHART  
CSR No. 8714  
Job No. 5783314  
PAGES 1 - 251

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Remote videotaped deposition of  
T. KIM PARNELL, Ph.D., Volume I, taken on behalf of  
Defendant Intuitive Surgical, Inc., with all  
participants appearing remotely via videoconference  
and the witness testifying from San Jose,  
California, beginning at 9:16 a.m. and ending at  
4:57 p.m. on Friday, March 10, 2023, before  
NADIA NEWHART, Certified Shorthand Reporter No. 8714.

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18 Also Present:

19 SCOTT SLATER, Videographer

1 Q No. If you don't know, that's fine.

2 A I -- I cannot define it for you right now.

3 I'm not a medical doctor. I am merely a Ph.D.

4 mechanical engineer with medical device training.

5 So I'm sorry. I don't know all of those things. 01:55:11

6 Q There's a section in your report in the  
7 hospital case that starts on page 95. The heading  
8 is "Inadequacies of the EndoWrist Use Counter."

9 A Oh, yeah. 95?

10 Q Page 95, yes. 01:55:31

11 A Okay.

12 Q Your opinion in this section is that the use  
13 counter on Intuitive's EndoWrist is inadequate for  
14 accurately tracking wear and tear; is that correct?

15 A Yes. 01:55:46

16 Q And you say that Intuitive already tracks  
17 information that would allow it to measure wear and  
18 tear based on the length of time an individual  
19 EndoWrist is used in surgery?

20 A Well, to at least measure those parameters 01:56:02

21 like time. For example, in -- yeah, in the logs  
22 that are collected and then also the My Intuitive  
23 app, it shows time associated with a device in  
24 different operations. So it's pretty clear that

25 they'll make that available or even have it 01:56:19

1 available and have had for years.

2 Q And your opinions on the My Intuitive app,  
3 those don't appear anywhere in your report, correct?

4 A I explained that I only found that after my  
5 last report was submitted, so, no, they don't. 01:56:37

6 Q Okay.

7 A I could add something in a supplement, I  
8 suppose, if you would like that, but they don't  
9 appear in my report.

10 Q You say that Intuitive already tracks 01:56:47  
11 information that would allow it to measure wear and  
12 tear based on the complexity of the tasks, the  
13 instrument performed?

14 I'm looking at paragraph 222, if that's  
15 helpful. 01:57:01

16 A 222? Well, if I may, let me just read that  
17 paragraph so it's clear exactly what I said here,  
18 and then we can talk. Paragraph 222, page 99 (as  
19 read):

20 "A system designed to accurately 01:57:21  
21 track the actual wear that an  
22 EndoWrist experiences in surgery  
23 would consider, at a minimum, both  
24 the length of time the instrument  
25 has been used and the complexity of 01:57:33

1 to the Da Vinci and going in to follow mode. It  
2 doesn't even involve -- it might not even be -- do  
3 any surgical operation. I mean, typically, it  
4 would, but it might not do an operation even, and  
5 that would be a use of life. 02:01:41

6 Q And so you're saying that tracking time and  
7 complexity would be better than just tracking uses,  
8 right?

9 A Well, I'm saying that, but I think also  
10 Intuitive surgical people like Duque in this 02:01:55  
11 reference cited, and then back here, McGrogan, I  
12 think they also agreed in deposition that that would  
13 be true.

14 Q And, sir, I'm not asking you to interpret  
15 their testimony. I'm just asking for your opinion. 02:02:10

16 A Well, I'm just merely citing their testimony  
17 as further support for my opinion. I'm giving you  
18 my opinion, but I'm telling you that it's not just  
19 something I'm pulling out of the air. I am, in  
20 fact -- I am using Intuitive personnel testimony to 02:02:28  
21 help to support my opinion.

22 Q Now, you agree that implementing the changes  
23 you suggest would require redesigning Intuitive's  
24 EndoWrist, correct?

25 A Well, the ones that we're talking about here 02:02:44

1 don't require any change. Those are all -- those  
2 are all things that are apparently available, that  
3 My Intuitive app tracks time, and apparently these  
4 logs that are current, that would also include time.

5 If they track current versus time, then they 02:02:59  
6 certainly have time, but they have more than time.  
7 They have these things for each degree of freedom,  
8 so --

9 Q But --

10 A -- not, I don't think it requires any 02:03:09  
11 redesign of the EndoWrist. It requires  
12 intelligently making use of data that they already  
13 have with their Xi's, and it appears with their Si's  
14 too, because I think the My Intuitive app said it  
15 applies to both. 02:03:30

16 Q So at a minimum, Intuitive would have to  
17 write new software and develop a use counter that  
18 would expire the EndoWrists based on these factors  
19 that you're talking about, correct?

20 MR. SNYDER: Objection. 02:03:41

21 THE WITNESS: You know, sir, I don't know on  
22 that, because I haven't been asked to redesign an  
23 EndoWrist or to interpret what they would need. I  
24 could certainly talk about things that I would  
25 consider and the things that I think should be 02:03:52



1 considered.

2 But as you pointed out, there's a lot of --  
3 there's a lot of issues that have to be considered  
4 in any kind of redesign. It does appear to me,  
5 sitting here today -- with what I know, it appears 02:04:05  
6 to me that the information is available that would  
7 allow them to do these things right now without any  
8 modification.

9 Now, what would they do with it? How would  
10 they change their use counter? I would agree -- 02:04:20  
11 here's one thing I would agree. I don't think you  
12 want a device to expire during a procedure. So  
13 you'd have to do it where any information that comes  
14 from this comes at the end of a procedure, not  
15 during a procedure. I would agree with that. But, 02:04:34  
16 again, those are things that can all be done and not  
17 done with a lot of complexity either.

18 BY MR. CHAPUT:

19 Q So you say they can be done, but you aren't  
20 offering any opinion on how they would be done; is 02:04:49  
21 that correct?

22 A If you ask me to, I can --

23 Q I'm asking about your report, sir. In your  
24 report, you are not --

25 A Well, sir, my report -- we've talked about 02:05:00